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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Frequency Assignment 156.250 MHz)
For Port Operations In Los Angeles)
And Long Beach, California Ports)

WT Docket No. 99-332

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF WJG MariTEL Corporation

WJG MariTEL Corporation ("MariTEL"), by its counsel and pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415 (1998), hereby submits its comments responsive to the *Notice of Proposed Rule Making* ("Notice") in the above-captioned proceeding. The *Notice* solicits public comment on a proposal¹ to designate marine VHF Channel 05A (156.250 MHz) for port operations communications in Los Angeles and Long Beach, California port areas ("Ports").

I. Background

MariTEL is the largest provider of VHF public coast station services in the United States. Its stations cover most of the coastal United States, in addition to the U.S. inland waterways, and consist of transmitter locations each interconnected to MariTEL's control switching office located in Gulfport, Mississippi. MariTEL actively participated in the FCC's recent auction of VHF Public Coast ("VPC") station licenses, and was the winning bidder for

¹ See Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, from Los Angeles and Long Beach Port Pilots ("LA/LB Pilots"), dated April 30, 1997.

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nine regional licenses. MariTEL is in the initial stages of building a North American VPC network that will offer advanced telecommunications services on a cost-effective basis.

Many segments of the marine telecommunications marketplace remain underserved. Yet, there remains spectrum that is not fully utilized that can be employed to meet those needs. MariTEL is encouraged that, in this proceeding, the FCC has responded favorably to a request to redesignate private coast spectrum to satisfy demonstrated requirements for additional capacity for Vessel Traffic Services ("VTS"). MariTEL is concerned, however, that future reallocation of maritime channels not be performed without notice and comment rule making. MariTEL is therefore pleased to have the opportunity to provide the following comments.

II. Comments.

The *Notice* contains three proposals responsive to the LA/LB Pilots' claim that marine VHF Channel No. 77 (156.875 MHz) is overly-congested in the Ports area. In particular, the FCC proposes to:

1. Amend its Part 80 rules to permit Channel No. 05A to be used for intership port operations at the Ports, within a 25-mile radius of Point Fermin, California. *Notice* at ¶ 6;
2. Amend its Part 90 rules to specify that Public Safety frequency assignments 156.240 MHz and 156.2475 MHz will be secondary to marine port operations within 100 miles of Los Angeles. *Notice* at ¶ 6; and
3. Amend its Part 80 rules to prohibit private coast stations to operate on Channel 05A within the Ports area. *Notice* at ¶ 9.

Further, the *Notice* contains a temporary "freeze," as of November 15, 1999, on the ability of applicants to seek frequency assignments 156.240 MHz and 156.2475 MHz during the pendency of this proceeding. *Notice* at ¶ 7.

MariTEL supports virtually all of the proposals contained in the *Notice*. The *Notice* serves the public interest because it recognizes that frequency allocations, including maritime frequency allocations, must be reviewed and updated to keep pace with changing marketplace conditions. In *Bechtel v. FCC*, the U.S. Court of Appeals for the D.C. Circuit stated:

The Commission's necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise. . . implies a correlative duty to evaluate its policies over time to ascertain whether they work - that is, whether they actually produce the benefits the Commission originally predicted they would.

957 F.2d 873, 881 (1992). As the nation's spectrum manager, the FCC also has a special duty to undertake occasional reviews of its spectrum allocation policies and not hesitate to take action when called for, as is the case here. 47 U.S.C. § 332(a) (1997). Because the *Notice* is an example of the FCC fulfilling this duty, MariTEL supports the proposals.

The *Notice* further serves the public interest because the FCC recognizes that *actual current usage* of the frequency assignments at issue – in other words, marketplace demand – is a relevant factor in determining the best future use of the spectrum. For example, the *Notice* finds that, because frequency assignment 156.250 is underused in the Ports area, it should be reallocated for intership use, a service that is congested. *Notice* at ¶ 9. MariTEL supports this approach to spectrum management, which looks to the future, not the past.

MariTEL specifically applauds two elements of the FCC's willingness to review the use of underemployed spectrum. First, MariTEL is encouraged that the FCC is considering allocating spectrum for maritime purposes despite the proximity of the target spectrum to channels designated for public safety purposes. MariTEL believes that the FCC's approach is realistic because of the changing use of public safety spectrum. Public Safety entities have

been allocated an extensive amount of spectrum in the bands above 700 MHz.² Accordingly, the need for continued licensing of channels below 700 MHz for public safety services should be examined. In addition, since the time that the FCC initially established the channelization scheme for maritime and public safety use of the 156/162 MHz band, the Commission has acted to promote the use of narrower bandwidths in connection with private land mobile operations.³ The promotion of more spectrum efficient channelization and the development of more sophisticated receiver technology may make the FCC's previous presumptions regarding protection of public safety operations outdated and support the Commission's proposal to allow the use of Channel 05A for VTS purposes.

Second, MariTEL applauds the Commission's willingness to examine the use of private coast spectrum to satisfy the needs of other segments of the marine industry. MariTEL believes that, as noted above, spectrum requirements are not static, and the FCC must be willing to reexamine the manner by which it has designated for use the channels allocated to the maritime services to determine whether that designation continues to satisfy the public interest. Nevertheless, MariTEL is concerned that the FCC's proposal to amend Section 0.331 of the regulations may go too far. Pursuant to that proposal, the Chief of the Wireless Telecommunications Bureau could, without notice and comment rule making, designate any marine channel for intership port operations. As the Commission is aware, MariTEL was the winning bidder, at the cost of nearly \$7,000,000, of channels designated for public coast

² See *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010*, WT Docket No. 96-86, FCC 98-191 (1998).


operations. It is currently designing and constructing a national network designed to provide maritime communications. While trustful of the wisdom of the Chief of the Wireless Telecommunications, it is unwilling to have the VPC frequencies for which it was the winning bidder, which are specified in Section 80.373 of the FCC's rules, be redesignated for port operations without due process. MariTEL does not object to the proposed modification of Section 0.331 of the regulations, so long as any spectrum obtained through competitive bidding is exempted from the regulation.

III. Conclusion

Based on the foregoing, MariTEL urges the Commission to consider the foregoing comments and act in a manner consistent with the recommendations made herein.

Respectfully submitted,

WJG MariTEL Corporation

By: 

Russell H. Fox
Russ Taylor
GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 2000
(202) 408-7205

January 18, 2000

Its Attorneys

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³ See *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, PR Docket No. 92-235, 10 FCC Rcd 10076 (1995).